IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 350 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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BHIMABHAI BADALBHAI & 1 - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Defendant(s)

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Appearance :
MR PM THAKKAR for Appellant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 1,
MR DD VYAS for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 20.06.90 passed by the Commissioner for Workmen's Compensation and Civil Judge (S.D), Surendranagar in Workmen's Compensation Case No. 56 of 1987 whereby the authority dismissed the application of the appellants.

2. The appellants are parents of the deceased Sajjanben who on 31.08.87 while working as a daily wager she got electrocuted with an electric pole and later succumbed to

the electrocution on 05.09.87. The appellants, therefore, filed an application claiming Rs. 38,137.42 with penalty at the rate of 50%. The competent authority after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellants has contended that the competent authority has erred in holding that the deceased was not a workman of the respondent and that though the death was due to electrocution, it has not arisen “in the course of and out of employment” which is against the weight of evidence on record and therefore requires to be quashed and set aside.

4. Learned counsel for the respondent has supported the award of the authority and has submitted that the authority has considered the oral and documentary evidence in detail regarding the issue of employment of the deceased with the respondent and has passed the award in accordance with law.

5. Heard learned counsel for the parties. I have gone through the award of the authority and the documents placed on record. The authority has perused Ex. 31 being the Gangman Diary wherein the names of the family members of the appellants are mentioned with ration card as on

01.09.87. A perusal of the same reveals that the appellants also have a daughter aged 20 years and a son aged 19 years other than the deceased.

5.1 As per the say of the appellants, the number of members from their family engaged in the scarcity work were four. However, the authority has ruled out the possibility of Sajjanben being one of the labourers as at page 4 of the said exhibit in clause no.7 it is clearly instructed that no person below the age of 14 should be included in the Gang and such person should not be marked present in the muster and in the same diary as per the details of the family members deceased Sajjanben is shown to be aged 12 years only. The authority on the aforesaid facts and circumstances therefore came to the conclusion that the deceased was not employed with the respondent. However, no other evidence is produced by the appellants to take a different view than the one taken by the authority. I am, therefore, in complete agreement with the reasonings adopted and findings arrived at by the authority and find no reason to cause interference in the matter.

6. In the premises aforesaid, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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